

Chairperson Roberts called the regular meeting to order at 6:34 p.m. All five commissioners were present having two vacancies. Glen Black, Director of Community Development and James Shoopman, City Planner also attended.

### **Citizen Comments**

There were none.

### **Rezone Request of 1695 H38 Rd (Fernando Estates Subdivision)**

Chairperson Roberts opened the public hearing and requested staff's report and recommendations.

The following was presented by James Shoopman, City Planner.

#### ***Request:***

*The applicant is requesting that the zone district of 1695 H38 Rd be changed from A-1 to R-1A to allow manufactured housing and a higher density. The applicant is proposing that this zone change be allowed upon condition that the future subdivision of this parcel be restricted to ½ acre sized lots.*

*The applicant has submitted a letter presenting his request (see applicant's letter).*

#### ***Background:***

##### ***Zoning:***

- *The A-1 district allows manufactured housing and 1 acre lots.*
- *The R-R district allows ½ acre lots but does not allow manufactured housing.*
- *The R-1A district allows manufactured housing and .172 acre (7500 sq ft) lots.*

*The property at 1695 H38 Rd is:*

- *located at the east end of H38 Rd,*
- *currently zoned A-1,*
- *surrounded by A-1 zoned parcels,*
- *approved to be subdivided into 9 lots as of May, 2006.*

#### ***Criteria for Rezoning:***

*According to section 17.04.270 of the City Municipal Code, amendments to the Zoning Map involving any change in the boundaries of an existing district or changing the district designation of an area shall be allowed **only** upon findings as follows:*

1. *The amendment is not adverse to the public health, safety, and welfare; **and***
2. *a. The amendment is in substantial conformity with the Master Plan; **or***
  - b. *The existing zoning is erroneous; **or***
  - c. *Conditions in the area affected or adjacent areas have changed materially since the area was last zoned.*

**Rezone Request of 1695 H38 Rd (Fernando Estates Subdivision) continued...*****Petitions:***

*No petitions were received as of 2/4/08.*

***Staff Recommendations:***

*Staff recommends denial of the request based upon the following:*

- 1. Staff does not feel that the existing zoning is erroneous*
- 2. Staff does not feel that conditions in the area have changed materially since the area was last zoned.*
- 3. Allowing zone changes upon conditions ("contract zoning") would undermine the intent of zoning and should be avoided.\*\*\**
- 4. The requested zone district would allow lot sizes that are substantially smaller than surrounded parcels. Seven of the immediately surrounding parcels averaged 13.17 acres in size. Throwing out the high and low outlier produces an average parcel size of 6.4 acres.  
A 1/2 acre parcel (minimum allowed in R-R) would be 7.8% of the average surrounding parcel size of 6.4 acres. A 7500 square foot parcel (minimum allowed in R-1A) would be 2.6% of the average surrounding parcel size of 6.4 acres.*
- 5. The intent of extending sewer service east was not to encourage higher densities. Sewer lines were extended east along H38 Rd to provide sewer to lots with failing septic systems.*
- 6. Changing the zone district of this parcel would appear to be "spot zoning".\**

Mr. Shoopman offered the commissioners a viewing of the approved preliminary 9 lot subdivision plans in hand and also showed the applicant's proposed 16 lot subdivision plan in his Power Point presentation.

Commissioner Bell asked when the 9 lot subdivision had been approved and if it was within city limits at that time.

Staff replied that the preliminary plat was approved in 2006 during which time it was within the city limits.

There was discussion concerning the standards of the A-1 zone district and the availability and connection of city utilities.

Darrell Gilks, from Montrose, working in Delta presented his reasoning for the zoning change. He stated that 9 lots are not financially feasible. He addressed the zone change criteria, and stated that they did not feel that a higher density would create adverse conditions that would affect the health, safety or welfare. He stated that the zoned district of the parcel has been A-1 since the time of annexation. He stated that this parcel is not farm land and had never been farm land. He reverted to changes in the area and concluded that because sewer and water are available the City should allow these resources to be better utilized.

Commissioner Raley asked the applicant how many lots were proposed in the approved preliminary plan.

**Rezone Request of 1695 H38 Rd (Fernando Estates Subdivision) continued...**

Mr. Gilks replied that the parcel was approved to be subdivided into 9 lots. His new proposal is to subdivide the parcel into 16 lots.

Commissioner Bell asked if the owner of the parcel whom Gilks was representing was out of the country. Mr. Gilks replied that his client lives out of the country.

Chairperson Roberts asked if improvement to H38 Rd road was required as a condition of preliminary plat approval.

Mr. Gilks replied that the development of 9 lots would not be financially proficient to support the improvements mentioned.

Commissioner Bell asked if the developer was required to begin construction within a certain time period.

Staff clarified that a developer has 2 years from preliminary approval to apply for a final plat.

Chairperson Roberts stated that rezoning this parcel would imply spot zoning.

Mr. Gilks wanted to discuss how Stone Mountain had established their zone district.

Staff clarified that the adjacent parcel east of Stone Mountain was initially zoned R1-A at the time it was annexed into the City.

There was more discussion about R1-A zone districts near H 38 Road.

Commissioner Oelke asked how many duplexes were proposed on the 16 lots of the new plan.

Mr. Gilks replied that no duplexes were proposed.

Commissioner Oelke asked what type of structure was drawn on lot 6 of the proposed 16 lot plan.

Mr. Gilks replied that it is an existing duplex.

Commissioner Oelke asked if the rest of the homes in the proposed 16 lot subdivision would be single family even though duplexes are allowed in the requested R-1A zone.

Staff clarified that duplexes are not allowed in the R1-A zone. Existing duplexes would become a legally non-conforming use.

Surrounding areas, neighboring parcels, and land features were further analyzed.

Chairperson Roberts clarified that at least six or seven parcels separate this property from the nearest R1-A zone district.

Mr. Gilks stated that it is his understanding that the comprehensive plan is going through changes and will better address zoning. He expressed concern that most of North Delta is zoned A-1. He asked how could spot zoning be avoided in order to achieve change.

**Rezone Request of 1695 H38 Rd (Fernando Estates Subdivision) continued...**

Commissioner Oelke referenced the current comprehensive plan, beneath the topic of guiding growth, and stated that development is encouraged in areas immediately adjacent to existing development, conflicting land uses should be buffered, and preservation of the community's rural character.

Staff clarified that the majority of the surrounding parcels were recently annexed in 2000; therefore their initial zoning was not addressed in the current comprehensive plan.

Chairperson Roberts requested public comment. There were none.

Chairperson Roberts closed the public hearing and requested commissioner comments.

Commissioner Raley commented that the applicant had an interesting point in that if anyone is going to development in the area, someone will have to spot zone. He stated that he did not have a concern for the subdivision, but ultimately could not support the spot zoning.

Commissioner Jahn stated concern over the lot sizes and that they would be creating a non-conformity in regards to the existing duplexes.

Commissioner Oelke commented that the requested zone change would be spot zoning.

Commissioner Bell suggested that they address this item within the comprehensive plan process.

Chairperson Roberts stated that creating a spot zone is a major problem.

Commissioner Oelke motioned that Planning Commission not to recommend approval to City Council of the request to rezone the property located at 1695 H 38 Road from A-1 to R1-A.

Commissioner Jahn seconded the motion.

All were in favor and the motion carried.

**Sunrise Meadows Preliminary Plat ~ located at 1775 East 5<sup>th</sup> Street**

Chairperson Roberts opened the public meeting and requested staff's report and recommendations.

The following was presented by James Shoopman, City Planner.

***Project Proposal***

*The Sunrise Meadows sketch plan proposes to subdivide approximately 6.4 acres into 18 lots which would allow a density of up to 36 duplex units.*

***Zoning Regulations***

*The property's zone district was recently established as R-2 which is intended to provide an area which is suitable for single family homes and duplexes. The property is surrounded by A-1 zoned properties to the North, East, & West and an R-1 zoned subdivision to the South (see zoning map).*

Sunrise Meadows Preliminary Plat ~ located at 1775 East 5<sup>th</sup> Street continued...***Preliminary Plan Requirements***

*Staff review of the preliminary plat has found it to substantially comply with the preliminary plat requirements of Title 16 and the land use regulations of Title 17 of the City Municipal Code.*

***Staff Recommendations***

*Staff recommends **approval** of the Sunrise Meadows preliminary plat upon the following conditions:*

- 1. A sewer extension agreement must be entered into for off site improvements.*
- 2. Easements for off site improvements must be dedicated and recorded before construction begins*
- 3. Minor redline corrections need to be made to the plat and construction drawings*
- 4. Water tap fees must be paid before construction begins. Water and sewer improvement fees may be paid when applying for building permits. There is a **surcharge of \$550** for each  $\frac{3}{4}$  tap, to cover the cost of the 5<sup>th</sup> St water main extension project, which may also be collected at the time of building permit.*
- 5. The payment in-lieu of parks (PILP) fee of **\$1203 per unit** must be received before a final plat is recorded.*
- 6. The code requires provisions for perpetual maintenance of all common areas and structures such as perimeter landscaping, fences, and retention ponds. Staff recommends that an HOA be formed to provide this.*
- 7. The development must comply with all City of Delta requirements and other regulatory/permitting agency requirements.*
- 8. Preliminary Plat approval expires 2 years from the date of such approval.*

Commissioner Bell asked if all issues concerning the sewer line amongst adjacent property owners had been resolved.

Mr. Shoopman replied that the design had been approved by the Public Works Department and remaining items to be addressed should be included in their conditions of approval as outlined above.

Commissioner Bell asked for clarification about the fencing that was requested at sketch plan.

Staff reviewed the City's requirements for buffering residential subdivisions from arterial streets.

Chairperson Roberts requested the applicant's presentation.

John Miller, Ute Engineering, stated that Mr. Jensen planned to screen the property along the west, north, and south sides of the subdivision.

There was further discussion of fence construction details.

Mr. Jensen asked if a 6' cedar privacy fence would be acceptable.

The Commission accepted the 6 foot privacy fence with unanimous nods.

**Sunrise Meadows Preliminary Plat ~ located at 1775 East 5<sup>th</sup> Street continued...**

Commissioner Raley motioned to recommend approval of the Sunrise Meadows Preliminary Plat for Subdivision to City Council, contingent upon the following:

- Staff's recommendations as outlined in the staff report
- Planning Commission's recommendation that a 6' cedar privacy fence be constructed along 5<sup>th</sup> Street and along the northern and western sides of the subdivision.

Commissioner Jahn seconded the motion.

All were in favor and the motion carried.

**Presentation and request for discussion of Jennings Landing water system**

Chairperson Roberts opened the discussion by asking for staff's report.

The following was presented by James Shoopman, City Planner.

***Request***

*Staff is requesting non-binding feedback from the Planning Commissioners concerning a proposal from Grace Homes to construct a 17' in diameter x 129' in height (13 stories) elevated tank and a system of pumps to fill the tank and provide fire flow to the proposed Jennings Landing subdivision.*

***Background***

*The Jennings Landing Preliminary Plat proposes to subdivide approximately 102 acres adjacent to Sweitzer's Lake into 261 lots for detached single family homes. The property's zone district is R-2 which is intended to provide an area which is suitable for single family homes and duplexes.*

*Because of the elevations of the subdivision site and water availability at Pioneer Rd, the developer is unable to provide adequate water pressure and flow volume for residential consumption and fire service without constructing a system of tanks and pumps.*

***Staff Recommendations***

*The City's Public Works and Utilities directors support the proposed system for reasons that include functionality, cost, and ease of maintenance (see attached letter).*

*Planning Staff requests that the Planning Commissioners, City Council Members, and citizens of Delta carefully weigh the following implications:*

1. *The City's Municipal code restricts structure heights to 45'. The developer will need to apply for a variance. The following variance criteria must be substantially met:*
  - *The variance will not adversely affect the public health, safety and welfare.*
  - *Unusual physical circumstances exist, such as unusual lot size or shape, topography, or other physical conditions peculiar to the affected property which make it unfeasible to develop or use the property in conformity with the provisions of this Chapter in question.*
  - *The unusual circumstances have not been created as a result of the action or inaction of the applicants, other parties in interest with the applicant, or their predecessors in interest.*
  - *The variance requested is the minimum variance that will afford relief and allow for reasonable use of the property.*

**Presentation and request for discussion of Jennings Landing water system continued...**

- *The variance will not result in development incompatible with other property or buildings in the area, and will not affect or impair the value or use or development of other property.*

*Does Planning Commission feel that the proposal meets the variance criteria?*

2. *The base elevation of the tank is proposed to be located 180' higher than the City's base elevation of 4950'. The top of the tank would be 309' above the City's base elevation. Does the City have concern for the visual impact that this proposal may have inside and outside of city limits?*
3. *The structure is proposed to be located near the entrance to Sweitzer Lake. Colorado State Parks has voiced concern over the location and height of the tank (see attached letter).*
4. *Is the City willing to consider alternatives to a 129' elevated tank such as:*
  - *A lower profile above grade tank with booster station*
  - *A below grade tank with booster station*
  - *Increases in operating costs could be offset with a monthly water surcharge paid by the residents of the subdivision*
5. *Delta County fire truck ladders are 75'. Does the County have the resources to perform rescue operations if needed?*
6. *Is the City comfortable with the likelihood of trespassing, graffiti, and people shooting at the tank?*
7. *What should be the color of any above grade tank if built?*

*Planning Staff has provided a questionnaire to assist the Planning Commissioners in giving feedback to the developer.*

Mr. Shoopman commented that Grace Homes had erected a flag with a crane to demonstrate the proximity of height where the tower is proposed. He relayed his findings from traveling to various locations throughout the city in order to observe how different views could be affected.

There was discussion about various dimensions of the tank along with why the proposed location was derived.

Commissioner Oelke asked if this tank would be serving more developments besides Jennings Landing.

Staff replied that the tank had been sized only to serve this development.

Chairperson Roberts requested the applicant's presentation.

Jim Atkinson, Jehn Engineering, stated that he had brought various members of their design team to help answer questions from the commission. He explained why they had chosen the proposed location. In addition, he presented a basic overview of how the system functions, design details, and the tank's composition.

The commissioners were handed a color wheel containing 5 colors. Mr. Atkinson stated that the color would be incorporated into the tanks composition.



**Presentation and request for discussion of Jennings Landing water system continued...**

Mr. Akinson presented some of the alternatives that they had considered.

Pat Gromer, EAI West, Installer of Water Tanks, stated that they could provide as many colors as a buyer paid for and that the color never chips, fades, or peels. He discussed the tanks resistance to being shot at.

There was discussion of the trade-offs of a lower-profile wider tank.

Mr. Gromer reiterated that elevation systems are dependable.

There was discussion of the time duration between when the system would be constructed and when the city would assume ownership of the system.

The option of running a system from the tanks on Pioneer Road was discussed.

There was discussion of alternatives that could serve this development, as well as future developments in the area, and that long term utilization should be evaluated.

Commissioner Bell expressed concern for a need of broader planning efforts.

Miscellaneous possible maintenance and cost concerns imposed on the city were debated.

Steve Warner, Park Manager for Sweitzer Lake State Park, stated that his main concern was that the location of the tank would be too close to the highest concentration of people using the park, which is by the entrance to the state park. He also felt that trespassing and vandalism from state park users would be likely. He stated that he is sympathetic to Grace needing a solution to provide water but is hopeful that an alternative method or location will be proposed.

The commission discussed various concerns in relation to the state park.

Doyle Cane, Grace Homes, stated that their intent was to come up with a cost effective system that would handle the subdivision and would be affordable to maintain. He stated the height could be changed and emphasized that this would cause the maintenance and operational costs of the system to increase. He concluded upon receiving the Commission's direction that they would make the effort.

Chairperson Roberts stated that according to the staff report, the proposed design would be the most cost effective for the City.

Mr. Black elaborated on staff's recommendations and the factors supporting them. He emphasized the importance of public opinion and that all concerns and issues discussed will be relayed to City Council at their meeting scheduled for February 19<sup>th</sup>, 2008, 7:30 p.m.

Staff and Commission discussed surcharge fees that have been charged throughout various places where similar circumstances have been imposed.

Mr. Shoopman requested that the Planning Commission consider whether or not Grace Homes could meet the variance criteria to be allowed to build a tank over the 45' maximum height restriction of the R-2 zone district.



**Presentation of proposed Code Changes**

The following was presented by Mr. Black.

**RECOMMENDATION**

*City Council has requested that Planning Commission would review the following proposed code changes and make a recommendation.*

**BACKGROUND**

*The following changes are being recommended by staff to improve consistency within the Code and allow modification of approved PUD plans:*

**17.72.080 Changes to adopted plans**

A. *The terms, conditions and the adopted PUD plan may be changed from time to time provided as follows: The Building Official or other agent as authorized by the City Manager may approve minor modifications in the location, sizing and height of buildings and structures if required by engineering or other circumstances not foreseen at the time the Planned Unit Development plan was approved, so long as the modification does not result in:*

**Change to:**

A. *The terms, conditions and the adopted PUD plan may be changed from time to time provided as follows: **the City Manager or City Manager's authorized agent** may approve minor modifications in the location, sizing and height of buildings and structures if required by engineering or other circumstances not foreseen at the time the Planned Unit Development plan was approved, so long as the modification does not result in:*

*Add the following section*

**17.72.080 Changes to adopted plans**

C. *Major modifications to adopted plans shall be considered as follows:*

1. *Major modifications to adopted plans shall require a new submittal of the entire plan. The applicant shall comply with the submission and review requirements of Chapter 17.72 and any other applicable municipal code sections, except the sketch plan submission and review of Section 17.72.040 will not be required. The applicant shall submit complete engineering and design drawings detailing the proposed changes and showing compliance with all requirements. The applicant shall pay the required submittal fees and shall meet the applicable planning schedule deadlines for review.*

2. *A public review process following the procedure of 17.04.290 shall also be required. Notice to owners of record under 17.04.290.D.3 shall be expanded to include all owners of record within the existing PUD and all property owners of record adjacent to the PUD within one hundred feet plus the width of any intervening public right-of-way. Planning Commission shall review and may recommend approval of the proposed changes if it determines the following criteria are substantially met:*

- a. *The requested change will not adversely affect the public health, safety and welfare.*
- b. *The requested change is the minimum that will afford relief and allow for reasonable use of the property.*
- c. *The requested change will not result in development incompatible with other property or buildings in the area, and will not impair the value or use or development of other property.*

**Presentation of proposed Code Changes continued...*****17.72.080 Changes to adopted plans continued...***

C. Major modifications to adopted plans shall be considered as follows continued...

3. The Planning Commission may recommend conditions of approval as necessary to insure that the above criteria are met. Planning Commission shall recommend approval or disapproval to City Council.

4. City Council shall review and approve or disapprove the revised plans.

***16.04.070.E.3 reads:***

(3) Minimum residential lot size must conform to zoning regulations, but in no case shall it be less than 6000 square feet.

***Change to:***

(3) Minimum lot size must conform to zoning regulations, but in no case shall it be less than 6000 square feet.

***16.04.070.E.6 reads:***

(6) Every residential lot shall front on a designated collector or local street. No residential lot shall front on a major arterial or minor arterial street. No access shall be permitted directly from a residential lot to a major arterial or minor arterial street. However, new residential lots may be created which have access onto an arterial street if the following conditions are met:

***Change to:***

(6) Every lot shall front on a designated collector or local street. No lot shall front on a major arterial or minor arterial street. No access shall be permitted directly from a lot to a major arterial or minor arterial street. However, new lots may be created which have access onto an arterial street if the following conditions are met:

**ACTION TO BE TAKEN IF APPROVED**

*Staff will take Planning Commission recommendation to City Council.*

Mr. Black explained that a developer has requested to increase a building footprint within an adopted PUD. He discussed the criteria of (17.72.080.A) that details what changes are allowed to be made to an adopted PUD. He summarized that minor modifications are allowed only if it is required by engineering or other unforeseen circumstances.

Commissioner Raley asked staff how the City's code is different from other places.

Mr. Black replied that many other jurisdictions allow major modifications. He explained that many jurisdictions require a developer to repeat the entire review processes as a new submittal.

Mr. Black asked the Commission for direction and if they believed the code should be changed.

Mr. Black discussed how public notice requirements should be extended to include all affected property owners within a PUD and also adjacent property owners.

The Commission determined that changes to adopted PUD plans should require a full review of the entire PUD, the same fees required of a new preliminary submittal, and public noticing of all properties within and surrounding the adopted PUD.

Planning Commission discussed the discretion that is needed when changing the code to ensure the best interests of all.

**Presentation of proposed Code Changes continued...**

Chairperson Roberts recommended the proposed changes contingent upon advisory of the city attorney.

The 6,000 square foot minimum residential lot size requirement of 16.04.070.E was discussed.

Commissioner Bell motioned that staff take the proposed code changes to City Council.

Commissioner Raley Seconded the motion

All were in favor and the motion carried.

Mr. Black mentioned a new code changing process.

**Minutes**

Commissioner Bell motioned to approve the minutes from the Planning Commission Meeting January 7th, 2008 as submitted by secretary.

Commissioner Jahn seconded the motion.

All were in favor and the motion carried.

**Commissioner Comments**

Commissioner Bell asked if the City would take title to the lot that the water tank will sit on.

Mr. Black replied that the tank and system would be located on an easement within the proposed HOA park.

**Staff Comments**

Various ideas were discussed about the development of Jennings Landing, including annexation agreement details.

The status of the Riverwalk Subdivision was discussed.

Meeting Adjourned 9:38 p.m.

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Lee A. Barber, Executive Secretary  
Community Development